

Amendment No. 1 to HB2244

Curcio  
Signature of Sponsor

**AMEND Senate Bill No. 2841**

**House Bill No. 2244\***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 13, Part 5, is amended by adding the following as a new section:

(a) Especially aggravated rape is unlawful sexual penetration of a victim by the defendant or the defendant by a victim accompanied by two (2) or more of the following circumstances:

(1) The defendant tortures the victim during the commission of the offense;

(2) The defendant mutilates the victim during the commission of the offense;

(3) The defendant also commits the offense of false imprisonment, as defined in § 39-13-302, against the victim;

(4) The defendant also commits the offense of kidnapping, as defined in § 39-13-303, against the victim;

(5) The defendant also commits the offense of involuntary labor servitude, as defined in § 39-13-307, against the victim;

(6) The defendant also commits the offense of trafficking for a commercial sex act, as defined in § 39-13-309, against the victim;

(7) The defendant has, at the time of the commission of the offense, more than one (1) prior conviction for a sexual offense or a violent sexual offense, as those terms are defined in § 40-39-202;

(8) The offense is committed by the defendant acting in concert with one  
(1) or more other persons;

(9)

(A) The defendant is, at the time of the offense, in a position of trust, or has supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional, or occupational status and uses the position of trust or power to accomplish the sexual penetration; or

(B) The defendant has, at the time of the offense, parental or custodial authority over the victim by virtue of the defendant's legal, professional, or occupational status and uses the position to accomplish the sexual penetration;

(10) The offense occurs during an attempt by the defendant to perpetrate first degree murder in violation of § 39-13-202;

(11) The defendant subjects the victim to extreme cruelty during the commission of the offense;

(12) The commission of the offense against the victim is prolonged by the defendant;

(13) The act of sexual penetration of the victim by the defendant or the defendant by the victim is repeated during the commission of the offense;

(14) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or an article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(15) The defendant causes serious bodily injury to the victim;

(16) The defendant's commission of the offense involved more than one  
(1) victim; or

(17) The defendant knows or has reason to know that the victim is:

(A) Mentally defective;

(B) Mentally incapacitated;

(C) Physically helpless; or

(D) A vulnerable adult, as defined in § 39-15-501.

(b) Especially aggravated rape is a Class A felony and shall be punished as follows:

(1) If the defendant was a juvenile at the time of the commission of the offense, then the sentence must be from Range III, as set forth in title 40, chapter 35; and

(2) If the defendant was an adult at the time of the commission of the offense, then the person shall be punished by imprisonment for life without possibility of parole.

(c) A person may not be prosecuted for a violation of this section and a violation of § 39-13-502, Section 2, or Section 3 if the facts supporting the prosecution arise out of the same criminal conduct.

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 13, Part 5, is amended by adding the following as a new section:

(a) Especially aggravated rape of a child is unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is less than eighteen (18) years of age, accompanied by any of the following circumstances:

(1) The defendant tortures the victim during the commission of the offense;

(2) The defendant mutilates the victim during the commission of the offense;

(3) The defendant also commits the offense of false imprisonment, as defined in § 39-13-302, against the victim;

(4) The defendant also commits the offense of kidnapping, as defined in § 39-13-303, against the victim;

(5) The defendant also commits the offense of involuntary labor servitude, as defined in § 39-13-307, against the victim;

(6) The defendant also commits the offense of trafficking for a commercial sex act, as defined in § 39-13-309, against the victim;

(7) The defendant has, at the time of the commission of the offense, more than one (1) prior conviction for a sexual offense or a violent sexual offense, as those terms are defined in § 40-39-202;

(8) The offense is committed by the defendant acting in concert with one (1) or more other persons;

(9)

(A) The defendant is, at the time of the offense, in a position of trust, or has supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional, or occupational status and uses the position of trust or power to accomplish the sexual penetration; or

(B) The defendant has, at the time of the offense, parental or custodial authority over the victim by virtue of the defendant's legal, professional, or occupational status and uses the position to accomplish the sexual penetration;

(10) The offense occurs during an attempt by the defendant to perpetrate first degree murder in violation of § 39-13-202;

(11) The defendant subjects the victim to extreme cruelty during the commission of the offense;

(12) The commission of the offense against the victim is prolonged by the defendant;

(13) The act of sexual penetration of the victim by the defendant or the defendant by a victim is repeated during the commission of the offense;

(14) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(15) The defendant causes serious bodily injury to the victim;

(16) The defendant's commission of the offense involved more than one (1) victim; or

(17) The defendant knows or has reason to know that the victim is:

(A) Mentally defective;

(B) Mentally incapacitated; or

(C) Physically helpless.

(b) Especially aggravated rape of a child is a Class A felony and shall be punished as follows:

(1) If the defendant was a juvenile at the time of the commission of the offense, then the sentence must be from Range III, as set forth in title 40, chapter 35; and

(2) If the defendant was an adult at the time of the commission of the offense, then the person shall be punished by imprisonment for life without possibility of parole.

(c) A person may not be prosecuted for a violation of this section and a violation of § 39-13-502, § 39-13-531, Section 1, or Section 3 if the facts supporting the prosecution arise out of the same criminal conduct.

SECTION 3. Tennessee Code Annotated, Title 39, Chapter 13, Part 1, is amended by adding the following as a new section:

(a) Grave torture is the infliction of severe physical and mental pain and suffering upon the victim with the intent to perpetrate first degree murder, in violation of § 39-13-202, and accompanied by three (3) or more of the following:

- (1) The defendant also commits the offense of especially aggravated rape, as defined in Section 1, against the victim;
- (2) The defendant also commits the offense of aggravated rape, as defined in § 39-13-502, against the victim;
- (3) The defendant also commits the offense of especially aggravated rape of a child, as defined in Section 2, against the victim;
- (4) The defendant also commits the offense of aggravated rape of a child, as defined in § 39-13-531, against the victim;
- (5) The defendant also commits the offense of false imprisonment, as defined in § 39-13-302, against the victim;
- (6) The defendant also commits the offense of kidnapping, as defined in § 39-13-303, against the victim;
- (7) The defendant also commits the offense of involuntary labor servitude, as defined in § 39-13-307, against the victim;
- (8) The defendant also commits the offense of trafficking for a commercial sex act, as defined in § 39-13-309, against the victim;
- (9) The defendant has, at the time of the commission of the offense, more than one (1) prior conviction for a sexual offense or a violent sexual offense, as those terms are defined in § 40-39-202;
- (10) The offense is committed by the defendant acting in concert with one (1) or more other persons;
- (11) The defendant mutilates the victim during the commission of the offense;
- (12) The defendant subjects the victim to extreme cruelty during the commission of the offense;
- (13) The commission of the offense against the victim is prolonged by the defendant;

(14) The act of sexual penetration of the victim by the defendant or the defendant by the victim is repeated during the commission of the offense;

(15) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or an article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;

(16) The defendant causes serious bodily injury to the victim;

(17) The defendant's commission of the offense involved more than one (1) victim; or

(18) The defendant knows or has reason to know that the victim is:

(A) Mentally defective;

(B) Mentally incapacitated;

(C) Physically helpless; or

(D) A vulnerable adult, as defined in § 39-15-501.

(b) Grave torture is a Class A felony and shall be punished as follows:

(1) If the defendant was a juvenile at the time of the commission of the offense, then the sentence must be from Range III, as set forth in title 40, chapter 35; and

(2) If the defendant was an adult at the time of the commission of the offense, then the person shall be punished by:

(A) Imprisonment for life without possibility of parole; or

(B) Death; provided that a punishment of death shall not be imposed until at least the thirtieth day following the occurrence of either of the following circumstances:

(i) The issuance of the judgment in a decision of the United States Supreme Court overruling, in whole or in part, *Kennedy v. Louisiana*, 554 U.S. 407 (2008), thereby allowing the use of the death penalty as punishment for an offense involving

the infliction of severe physical and mental pain and suffering upon the victim with the intent to perpetrate first degree murder that does not result in the death of the victim; or

(ii) The ratification of an amendment to the Constitution of Tennessee approving the use of the death penalty as punishment for the conviction of an offense involving the infliction of severe physical and mental pain and suffering upon the victim with the intent to perpetrate first degree murder that does not result in the death of the victim.

(c) A person may not be prosecuted for a violation of this section and a violation of Section 1, Section 2, § 39-13-502, or § 39-13-531 if the facts supporting the prosecution arise out of the same criminal conduct.

SECTION 4. Tennessee Code Annotated, Section 39-13-204, is amended by deleting subsection (a) and substituting:

(a) Upon a trial for first degree murder or grave torture, should the jury find the defendant guilty of first degree murder or grave torture, the jury shall not fix punishment as part of the verdict, but the jury shall fix the punishment in a separate sentencing hearing to determine whether the defendant shall be sentenced to death, to imprisonment for life without possibility of parole, or, if applicable, to imprisonment for life. The separate sentencing hearing shall be conducted as soon as practicable before the same jury that determined guilt, subject to the provisions of subsection (k) relating to certain retrials on punishment.

SECTION 5. Tennessee Code Annotated, Section 39-13-204, is amended by deleting subdivision (f)(2)(B)(i) and substituting:

(i) If the defendant has been found guilty of first degree murder as described in § 39-13-202(c)(2) or grave torture as described in Section 3, and the jury unanimously determines that no statutory aggravating circumstance has been proven by the state



beyond a reasonable doubt, or that a statutory aggravating circumstance or circumstances have been proven by the state beyond a reasonable doubt, but that such circumstance or circumstances have not been proven by the state to outweigh any mitigating circumstance or circumstances beyond a reasonable doubt, then the sentence shall be imprisonment for life without possibility of parole.

SECTION 6. Tennessee Code Annotated, Section 39-13-204, is amended by deleting subdivision (h)(2) and substituting:

(2) If the defendant has been found guilty of first degree murder as described in § 39-13-202(c)(2) or grave torture as described in Section 3, but the jury cannot ultimately agree on punishment, then the trial judge shall inquire of the foreperson of the jury whether the jury is divided over imposing a sentence of death. If the jury is divided over imposing a sentence of death, then the judge shall dismiss the jury and the judge shall impose a sentence of imprisonment for life without possibility of parole. The judge shall not instruct the jury, nor shall the attorneys be permitted to comment at any time to the jury, on the effect of the jury's failure to agree on a punishment.

SECTION 7. Tennessee Code Annotated, Section 39-13-204, is amended by deleting subsection (k) and substituting:

(k) Upon motion for a new trial, after a conviction of first degree murder or grave torture, if the court finds error in the trial determining guilt, then a new trial on both guilt and sentencing shall be held; but if the court finds error alone in the trial determining punishment, then a new trial on the issue of punishment alone shall be held by a new jury empaneled for that purpose. If the trial court, or any other court with jurisdiction to do so, orders that a defendant convicted of first degree murder or grave torture, whether the sentence is death, imprisonment for life without possibility of parole, or, if applicable, imprisonment for life, be granted a new trial, either as to guilt or punishment, or both, then the new trial shall include the possible punishments of death, imprisonment for life without possibility of parole, or, unless the defendant is convicted of first degree murder

as described in § 39-13-202(c)(2) or grave torture as described in Section 3, imprisonment for life.

SECTION 8. Tennessee Code Annotated, Section 39-13-206, is amended by deleting the language "first degree murder" wherever it appears and substituting the language "first degree murder or grave torture".

SECTION 9. Tennessee Code Annotated, Section 39-13-207, is amended by deleting subdivision (a)(2) and substituting:

(2) In any case of first degree murder as described in § 39-13-202(c)(2) or grave torture as described in Section 3, in which the state does not seek the death penalty, if the jury finds the defendant guilty of first degree murder or grave torture, then a sentencing hearing shall not be conducted as required by § 39-13-204, and the judge shall sentence the defendant to imprisonment for life without the possibility of parole.

SECTION 10. Tennessee Code Annotated, Section 39-13-208(b), is amended by deleting the language "as described in § 39-13-202(c)(2)" and substituting the language "as described in § 39-13-202(c)(2) or Section 3".

SECTION 11. Tennessee Code Annotated, Section 39-13-205, is amended by deleting the language "first degree murder" wherever it appears and substituting the language "first degree murder or grave torture".

SECTION 12. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 13.

(a) Sections 1 through 3 and 12 of this act take effect July 1, 2022, the public welfare requiring it, and apply to offenses committed on or after that date.

(b) Sections 4 through 11 of this act take effect on the thirtieth day following the occurrence of either of the following circumstances, the public welfare requiring it:

(1) The issuance of the judgment in a decision of the United States Supreme Court overruling, in whole or in part, *Kennedy v. Louisiana*, 554 U.S. 407 (2008), thereby allowing the use of the death penalty as punishment for an offense involving the infliction of severe physical and mental pain and suffering upon the victim with the intent to perpetrate first degree murder that does not result in the death of the victim; or

(2) The ratification of an amendment to the Constitution of Tennessee approving the use of the death penalty as punishment for the conviction of an offense involving the infliction of severe physical and mental pain and suffering upon the victim with the intent to perpetrate first degree murder that does not result in the death of the victim.

(c) The attorney general and reporter shall notify the executive secretary of the Tennessee code commission in writing of the occurrence of either of the circumstances in (b)(1) or (b)(2) and what date is the thirtieth day.